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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R09-OAR-2015-0399; FRL-9958-11-Region 9]**

#### **Air Plan Approval; Nevada, Lake Tahoe; Second 10-Year Carbon Monoxide Limited**

#### **Maintenance Plan.**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve a state implementation plan (SIP) revision submitted by the State of Nevada (“State”). On April 3, 2012, the State of Nevada submitted to the EPA a second 10-year limited maintenance plan (LMP) for the Lake Tahoe Nevada Area (“Area”) for the carbon monoxide (CO) national ambient air quality standards (NAAQS or “standards”). This LMP addresses maintenance of the CO NAAQS for a second 10-year period beyond the original 10-year maintenance period. On August 26, 2016, the State amended the 2012 submittal with a supplemental SIP submittal (“2016 supplement” or “supplement”). The EPA is also approving the 2011 emissions inventory, the 2024 projected emissions inventory and the revised alternative monitoring strategy included with the 2016 supplement. We are taking these actions under the Clean Air Act (CAA or “Act”).

**DATES:** This rule is effective on **[Insert date 60 days after the date of publication in the Federal Register]** without further notice, unless the EPA receives adverse comments by **[Insert date 30 days after the date of publication in the Federal Register]**. If we receive such

comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2015-0399 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our” refer to the EPA.

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## **I. Background**

### *A. Lake Tahoe Nevada Area's CO Limited Maintenance Plan*

Under the CAA Amendments of 1990, the Lake Tahoe Nevada Area was designated as nonattainment and classified as a “not classified” CO area. This was because the Area had been designated as nonattainment before November 15, 1990, the date of enactment, but had not violated the CO NAAQS in 1988 and 1989, prior to enactment. *See* 56 FR 56694 (November 6, 1991). On October 27, 2003, the State of Nevada submitted a request to the EPA to redesignate the Area from nonattainment to attainment for the CO NAAQS. Along with this request, the State submitted a CAA section 175A(a) LMP that demonstrated that the Area would maintain the CO NAAQS for 10 years following our approval of the redesignation request. A LMP is an option whereby an area's maintenance demonstration is considered to be satisfied for “not classified” areas if the monitoring data show the design value is at or below 7.65 parts per million (ppm), or 85 percent of the level of the 8-hour CO NAAQS.<sup>1</sup> We approved the State's redesignation request and 10-year LMP on December 15, 2003, effective February 13, 2004. *See*

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<sup>1</sup> *See* the EPA guidance memorandum, “Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas,” from Joseph Paisie, Group Leader, Integrated Policy and Strategies Group, Office of Air Quality Planning and Standards (OAQPS), to Air Branch Chiefs, October 6, 1995 (“CO LMP guidance”). Also note that the EPA uses the terms “nonclassifiable” and “not classified” interchangeably with respect to CO nonattainment areas. *See e.g.*, 57 FR 13498, 13535 (April 16, 1992).

68 FR 69611 (December 15, 2003).

Eight years after the EPA redesignates an area to attainment, CAA section 175A(b) requires the state to submit to the EPA a subsequent maintenance plan covering a second 10-year period.<sup>2</sup> This second maintenance plan must demonstrate continued compliance with the NAAQS during this second 10-year period. To fulfill this requirement of the CAA, the State submitted to the EPA on April 3, 2012, the second 10-year update of the Area's CO maintenance plan titled "2012 Revision to the Nevada State Implementation Plan: Updated Limited Maintenance Plan for the Nevada Side of the Lake Tahoe Basin, Including Douglas, Carson City and Washoe Counties" (hereinafter, "2012 plan" or "plan"). On August 26, 2016, the State amended the plan with a supplemental submittal. With this action, we are approving the 2012 plan, as amended by the 2016 supplement.

The 8-hour CO NAAQS of 9.0 ppm is attained when such value is not exceeded more than once a year. *See* 40 CFR 50.8(a)(1). The Lake Tahoe Nevada Area has attained the 8-hour CO NAAQS from 1979 to the present. According to the CO LMP guidance, areas that have design values (2<sup>nd</sup> highest maximum CO concentration) at or below 7.65 ppm (that is, at or below 85 percent of the 8-hour CO NAAQS) for eight consecutive quarters qualify to use the LMP option. The Area qualified for and used the EPA's CO LMP option for the first 10-year maintenance period. *See* 68 FR 69611. For the 2012 plan, the State again used the LMP option to demonstrate continued maintenance of the CO NAAQS in the Area. We have determined that the Area continues to qualify for the LMP option because the design value at the time the State adopted the plan was 3.1 ppm, based on eight consecutive quarters of certified data from 2010

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<sup>2</sup> In this case, the initial maintenance period extended through 2014. Thus, the second 10-year period extends through 2024.

and 2011.<sup>3</sup>

### *B. Alternative CO Monitoring Strategy*

The State's 2012 plan included notification to the EPA that the State intended to discontinue monitoring for CO at the Stateline, Nevada location and that the State would submit a separate request to discontinue CO monitoring. The 2012 plan included the State's alternative monitoring strategy for monitoring continued attainment of the CO NAAQS in the Area. The State submitted the alternative monitoring strategy to enable it to conserve resources by discontinuing the only remaining gaseous CO ambient monitor in the Lake Tahoe basin ("basin"). The State's alternative monitoring strategy relies on vehicle counts collected from automatic traffic recorders in the Area. Gaseous CO ambient monitoring is triggered when a specified level of higher vehicle counts is exceeded.

Shortly after its submittal of the 2012 plan, the State submitted a request to discontinue the CO monitor located at Harvey's Resort and Hotel in Stateline, Nevada (hereinafter, the "Harvey's monitor").<sup>4</sup> This action does not address the State's request to discontinue the Harvey's monitor. The EPA intends to respond to the State's request in a future action. In 2016, the State submitted the supplement to include, among other things, a revised alternative CO monitoring strategy.

### *C. Adjacent Maintenance Areas in California*

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<sup>3</sup> See Table 2. Additionally, according to the CO LMP guidance, an area using the LMP option must continue to have a design value "at or below 7.65 ppm until the time of final EPA action on the redesignation." See CO LMP guidance, page 2. Although this action is not a redesignation but merely approval of a second 10-year maintenance plan, we note that the Area would meet this requirement if it applied, even with the higher design value (*i.e.*, 5.4 ppm for 2011-2012) measured after the State submitted the 2012 plan to the EPA.

<sup>4</sup> The State's request to discontinue CO monitoring for the Lake Tahoe Nevada Area was submitted to the EPA on April 25, 2012. See letter from Rob Bamford, Chief, Bureau of Air Quality Planning, Division of Environmental Protection, Department of Conservation and Natural Resources, State of Nevada, to Matthew Lakin, Chief, Air Quality Analysis Office, Air Division, U.S. EPA Region 9, subject "Discontinuation of the SLAMS CO Monitor at Harvey's Resort and Hotel, Stateline, Nevada (AQS ID# 32-005-0009-4201-1)."

In addition to the Lake Tahoe Nevada Area, there are two adjacent CO maintenance areas to the west just over the Nevada-California state line. These two areas occupy the remainder of the basin on the California side. The Lake Tahoe North Shore area and the Lake Tahoe South Shore area are both California maintenance areas for CO. In 1998, the EPA redesignated both areas to attainment and approved maintenance plans for each as revisions to the California SIP. *See* 63 FR 15305 (March 31, 1998). At the conclusion of their initial 10-year maintenance period, the EPA approved second 10-year maintenance plans for each area as a revision to the California SIP, effective January 30, 2006. *See* 70 FR 71776 (November 30, 2005). The second 10-year maintenance plans for each of the two California areas demonstrated maintenance through 2018.

#### *D. Transportation Conformity*

Section 176(c) of the Act defines conformity as meeting the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. The Act further defines transportation conformity to mean that no federal transportation activity will: (1) cause or contribute to any new violation of any standard in any area; (2) increase the frequency or severity of any existing violation of any standard in any area; or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. The federal transportation conformity rule (*i.e.*, 40 CFR part 93 subpart A) sets forth the criteria and procedures for demonstrating and assuring conformity of transportation plans, programs and projects that are developed, funded or approved by the U.S. Department of Transportation, and by metropolitan planning organizations or other recipients of federal funds under Title 23 U.S.C. or the Federal Transit Laws.

The transportation conformity rule applies within all nonattainment and maintenance areas for transportation-related criteria pollutants. *See* 40 CFR 93.102(b). As prescribed by the transportation conformity rule, once an area has an applicable SIP with motor vehicle emissions budgets (MVEBs or “budgets”), the expected emissions from planned transportation activities must be consistent with such established budgets for that area.

## **II. The EPA’s Evaluation of Nevada’s Submittal**

The following are the key elements of an LMP for CO: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, contingency plan, and conformity determinations.<sup>5</sup> The 2012 plan contains the following sections to address these elements: 1) an introductory section containing a general discussion of plan approvals for the Area and its redesignation to attainment; 2) a maintenance plan section including subsections on monitoring data for the Area, air quality trends and background on the State’s intention to discontinue monitoring CO at the Harvey’s site; 3) a section titled “Verification of Continued Attainment” that addresses population change, traffic volumes, meteorology and the State’s surrogate monitoring method; 4) contingency measures for the Area; and 5) transportation conformity requirements.

The 2016 supplement revises several sections of the 2012 plan and contains an emissions inventory. Below, we describe our evaluation of the 2012 plan and 2016 supplement as they pertain to each of the required LMP elements.

The EPA evaluation sections that follow appear generally in the order of appearance of each section in the State’s 2012 plan. Exceptions include the monitoring data, which the EPA

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<sup>5</sup> *See* CO LMP guidance, pp. 3-5.

includes first to provide background and context for the State's submittal, and the emissions inventory. The inventory is the first element listed in the CO LMP guidance. It wasn't submitted as part of the 2012 plan but was included in the 2016 supplement.

*A. Ambient Air Quality Monitoring Data*

As noted previously, the primary NAAQS for CO are: 9 ppm (or 10 milligrams per cubic meter) for an 8-hour average concentration not to be exceeded more than once per year and 35 ppm (or 40 milligrams per cubic meter) for a 1-hour average concentration not to be exceeded more than once per year. *See* 40 CFR 50.8(a).

The 2012 plan includes a summary of 8-hour CO design values for the years 1975 to 2011, the year prior to the State's submittal of the plan. *See* 2012 plan, Table 2, pp. 5-6. Table 1 shows the complete, quality assured and certified ambient air monitoring design values for CO for the years 1998 to 2012.<sup>6</sup> The first maintenance plan for the Area covered the years 2004 to 2014. The 2012 plan covers the years 2014 to 2024. The year 2012 is the last year for which we have complete, quality assured and certified design values for CO in the Area.

Since 1984, no Lake Tahoe Nevada Area CO monitor has registered an 8-hour design value greater than 6.6 ppm,<sup>7</sup> which is 73 percent of the 9 ppm NAAQS, and since 2005, no monitor has registered a design value greater than 5.4 ppm, 60 percent of the NAAQS.<sup>8</sup> The EPA also notes that the Area never violated the 1-hour CO NAAQS.

**Table 1 – Carbon Monoxide Design Values for Lake Tahoe Nevada Area, 1998-2012**

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<sup>6</sup> Design values were derived from EPA's Air Quality System. For 1-hour CO design values, see the Lake Tahoe Nevada 1-Hour CO 1975-2013 Maximum Values Report, dated September 26, 2016. For 8-hour CO design values, see the Lake Tahoe Nevada 8-Hour CO 1975-2013 Maximum Values Report, dated September 21, 2016. Design values for each two-year period were derived from the annual values shown in these reports.

<sup>7</sup> *See* 2012 plan, Table 2, pp. 5-6.

<sup>8</sup> *See* 2012 plan, Table 2, pp. 5-6. *See also* Table 1.



Years	Design Value (ppm)	
	1-Hour	8-Hour
1998-99	9.5	4.3
1999-00	12.1	4.3
2000-01	12.1	4.2
2001-02	13.2	6.1
2002-03	13.2	6.5
2003-04	11.2	6.5
2004-05	9.4	4.4
2005-06	7.8	3.6
2006-07	7.5	3.7
2007-08	7.5	3.7
2008-09	7.6	2.6
2009-10	7.6	3.1
2010-11	6.8	3.1
2011-12	9.2	5.4

*B. Alternative Monitoring Strategy*

Citing the consistently low CO monitor values described above, and expressing a desire to conserve monitoring resources, the State requested in an April 25, 2012 letter that the EPA allow discontinuation of ambient air CO monitoring in the Lake Tahoe Nevada Area and instead use a surrogate monitoring method for monitoring maintenance of the CO NAAQS (“surrogate method” or “surrogate”).<sup>9</sup> This surrogate method was initially set forth in the 2012 plan. In its 2016 supplement, the State replaced the section on its surrogate monitoring method described in the 2012 plan. *See* 2012 plan, section 3.2.4 on page 14 titled “Surrogate Monitoring Method,” and 2016 supplement, section I, titled “Revision to Section 3.2.4 of the 2012 CO LMP,” on page 1.

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<sup>9</sup> *See* footnote 4.

Under the EPA's monitoring regulations, a State and Local Air Monitoring Station may be discontinued if the monitor in question has not measured violations of the applicable NAAQS in the previous five years, and the approved SIP provides for a specific, reproducible approach to representing the air quality of the affected county in the absence of actual monitoring data. *See* 40 CFR 58.14(c)(3). Accordingly, the EPA has evaluated whether the surrogate method constitutes a specific, reproducible approach to representing the air quality of the Lake Tahoe Nevada Area.<sup>10</sup> As noted previously, the State's surrogate method relies on vehicle counts in the Area. The State reasons that motor vehicles are the major contributor to CO pollution in the Area and that vehicle miles traveled (VMT) is an indicator of growth and can therefore be used as a surrogate for monitoring of CO.<sup>11</sup> In particular, the State points to the long-term downward trend in both CO design values and annual average daily traffic (AADT) over the 2001 – 2010 period.<sup>12</sup> Citing in the supplement the potential for high ambient air CO concentrations during winter months, the State presents a surrogate approach that uses monthly average daily traffic counts (MADT) during the CO "season" months (*i.e.*, October 1 to March 31).

Although both VMT and AADT are measures of traffic volume, AADT has the advantage in representing air quality in that it is measured in the Area on a daily basis and at two locations. While the State chose, in the 2012 plan, to use annual AADT as the measure of traffic volume, in the 2016 supplement the State chose to use the more narrowly focused MADT, calculated from traffic counts

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<sup>10</sup> The EPA will evaluate whether the Harvey's monitor has measured violations of the applicable NAAQS in the previous five years when we take a separate action to approve or disapprove the State's request to discontinue the Harvey's monitor under 40 CFR 58.14(c).

<sup>11</sup> The 2001 emissions inventory prepared by NDEP for the original redesignation request and maintenance plan estimated actual emissions during the peak CO season (specifically, the month of January) from mobile sources, including on-road and non-road vehicles. Stationary and area sources were not included in the inventory but are considered *de minimis* considering the lack of industrial activity in the area and the small residential population. Therefore, the vehicle count is a reasonable surrogate for overall CO emissions in the area.

<sup>12</sup> *See* 2012 Lake Tahoe plan, pp. 11-12.

during the CO season. The State will perform an annual review utilizing MADT counts collected in the Area by the Nevada Department of Transportation's permanent automatic traffic recorders in Incline Village, NV to the north, and Stateline, NV to the south.

In the supplement, the State lists seasonal MADT levels measured at these two traffic monitors from 2008 to 2015. *See* Table 2. Baseline MADT levels for each site are calculated using the average of 2008-2009, 2009-2010 and 2010-2011 seasonal MADT levels. These baseline levels are 24,201 for Stateline and 10,260 for Incline Village. Each spring, the State will compare the latest rolling 3-year average MADT levels to those baselines and report the results to the EPA in the Area's annual monitoring network plan.<sup>13</sup>

**Table 2 – Seasonal MADT Counts for Lake Tahoe Nevada Area, 2008-2015**

	Stateline, NV	Incline Village, NV
2008-2009 Season	24,791	10,276
2009-2010 Season	24,212	10,109
2010-2011 Season	23,600	10,396
2011-2012 Season	23,122	10,125
2012-2013 Season	22,848	10,154
2013-2014 Season	23,333	10,348
2014-2015 Season	24,319	10,618
Baseline (average of 2008-11)	24,201	10,260
Initial Trigger (baseline plus 25 percent)	30,251	12,825

As an initial matter, if the State's annual MADT report shows an average at either site that is 25 percent or more above the baseline at that site (that is, equal to or greater than 30,251

<sup>13</sup> The Nevada Division of Environmental Protection (NDEP) submitted AADT reports in a supplement to their ANPs for the initial maintenance years 2012, 2013 and 2014 in a letter. *See* letter, Phillip W. Shoopman, P.E., Chief, Bureau of Air Quality Planning, NDEP, to Meredith Kurpius, Chief, Air Quality Analysis Office, Air Division, U.S. EPA Region 9, dated July 22, 2015. Henceforth the NDEP commits to submit annual AADT reports as part of their ANP for the Area. The July 2015 ANP supplement shows that three-year average AADT levels for 2009-2011, 2010-2012, 2011-2013 and 2012-2014 were all below the 2008-2010 baseline level at both AADT station (Stateline and Incline Village). Therefore ambient air monitoring was not triggered.

for Stateline and 12,825 for Incline Village), the State will conduct, concurrent with continued MADT counting, ambient CO monitoring at the Harvey's monitor during the following CO season. The State commits to retain the Harvey's monitor site intact so that ambient monitoring can be resumed soon after being triggered. *See* 2016 supplement, page 2. These levels (*i.e.*, 30,251 for Stateline and 12,825 for Incline Village) represent the initial "trigger" for ambient air quality monitoring. Once triggered, the State will determine whether to continue ambient air monitoring. The State has developed a matrix for this purpose. *See* Table 3.

After the initial trigger and upon discontinuation of the first instance of ambient air monitoring that it triggered, the State identifies subsequent, incrementally larger triggers for future ambient air monitoring that would then apply. These subsequent triggers would apply at incremental 5 percent MADT average levels above the first trigger. That is, after the initial trigger where MADT exceeds 25 percent of the baseline, ambient monitoring would be triggered a second time if the Area measured more than 30 percent above the MADT baseline, and then again at 35 percent, etc.

It is important to note that the trigger levels to initiate ambient air monitoring are independent of the matrix table for continued air monitoring, and that the triggering MADT level will be followed by a new rolling average MADT by the time monitoring of the subsequent CO season is complete. To illustrate, the initial MADT trigger in CO season 1 requires air monitoring in CO season 2. MADT monitoring continues during CO season 2 (and throughout the maintenance period). The State then has two possible triggers for ambient air monitoring in season 3. First, if the MADT level in season 2 is higher than baseline plus 25 percent, plus 5 percent, the State will monitor ambient air in season 3. Independent of that, however, the criteria

in Table 3 could indicate *continued* air monitoring. To emphasize this point, we note that even a MADT level 20 percent above baseline can trigger continued ambient air monitoring in season 3 (or in any maintenance period CO season, where ambient air monitoring was performed in the prior season), if season 2 air monitoring yielded concentrations in excess of 75 percent of the CO NAAQS.

The decision matrix in Table 3 provides conditions for discontinuing ambient air monitoring, once such monitoring is triggered, in order to return to a surrogate-only approach. The matrix is structured such that, if the MADT rises above the baseline and the 2<sup>nd</sup>-high CO concentration also rises to approach the level of the standard, ambient air monitoring is continued during the next CO season. Conversely, as MADT and CO concentrations decline, the State would rely on the MADT surrogate method alone. This approach minimizes the amount of ambient air monitoring needed and State resources used in such monitoring when CO concentrations are low with respect to the standard, while ensuring that ambient air quality is directly monitored when conditions indicate that concentrations may be trending to elevated levels closer to the standard.

**Table 3 – Decision Matrix to Determine Whether to Continue CO Monitoring\***

Percent Change in 3-Year Rolling Average Seasonal MADT from the Baseline	2 <sup>nd</sup> -High 8-Hour Average CO Concentration as Percent of NAAQS			
	≤ 50	> 50 but ≤ 65	> 65 but ≤ 65	> 75
≤ 20	S	S	S	M
> 20 but ≤ 25	S	S	M	M
> 25 but ≤ 30	S	M	M	M
> 30	S	M	M	M

Source: *see* 2016 supplement, Table 6, page 3.

Key: S = surrogate method only; M = monitoring of ambient air continues in following CO season (in addition to ongoing MADT surrogate method).

\*Assumes ambient air monitoring has been triggered. This matrix is used to determine whether the State will continue ambient air monitoring, once triggered.

If the MADT review or the decision matrix indicates that ambient air quality monitoring must be performed, the monitoring data will be submitted to the EPA's Air Quality System. *See* Supplement, page 2. The State will include in its Annual Network Plan (ANP) a report on MADT, as previously stated. After the initial CO season air monitoring is completed, the State will summarize the results of such monitoring in the next ANP.

Also, in each instance where ambient air monitoring has been triggered by MADT levels, once the ambient air monitoring has been performed during the next CO season, the State will also include in its ANP the results of its assessment of which conditions in the matrix apply so as to determine whether to continue ambient air monitoring. If such monitoring is indicated, the State would conduct the air monitoring and then again report in the following ANP the results of its assessment with regard to the air monitoring performed and which conditions of the matrix apply.

We note that the Area benefits from the adjacent Lake Tahoe North Shore and the Lake Tahoe South Shore maintenance areas on the CA side of the basin. In both of these areas, the State of California's ongoing motor vehicle program continues to be implemented, including the State's low-emission vehicles and clean fuels programs.<sup>14</sup>

The EPA finds that the Nevada Division of Environmental Protection's (NDEP) surrogate monitoring method constitutes a specific, reproducible approach to representing the air quality of the Area. Specific traffic volume targets are listed by the State, and comparison of future traffic volumes to the trigger volumes are reproducible in that the State is using data from

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<sup>14</sup> *See* 2012 Lake Tahoe plan, p. 12.

permanent traffic counters and comparing that data to specific percent-above-baseline MADT trigger levels. If air monitoring is triggered, the matrix provides a specific set of conditions for the State to determine whether to continue air monitoring.

Given the long history of low CO concentrations in the Area, the relationship between CO levels and MADT and the triggers for both re-starting ambient air monitoring and, once re-started, to discontinue that monitoring, the EPA considers NDEP's surrogate to be adequate to represent CO concentrations in the Area. We also note that the EPA has previously approved similar traffic volume-based monitoring alternatives for CO in other LMPs.<sup>15</sup> Accordingly, the EPA is approving the surrogate monitoring method into the Nevada SIP.

*C. Attainment Emissions Inventory*

For maintenance plans, a state should develop a comprehensive, accurate inventory of actual emissions for an attainment year to identify the level of emissions that are sufficient to maintain the NAAQS. A state should develop this inventory consistent with the EPA's most recent guidance on emissions inventory development. For CO, the inventory should reflect typical wintertime conditions. Further, the EPA's CO LMP guidance recommends that an LMP include an attainment emissions inventory that represents emissions during the time period associated with the monitoring data showing attainment.<sup>16</sup> The NDEP submitted such an inventory for 2001 as part of the original Lake Tahoe Nevada Area redesignation request and maintenance plan that the EPA approved in 2003.<sup>17</sup> The NDEP did not include an attainment emissions inventory in the 2012 plan. They reasoned it wasn't needed because they provide CO

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<sup>15</sup> See, e.g., final approval of LMP and alternative monitoring strategy for Billings, Montana CO maintenance area, 80 FR 16571 (March 30, 2015); final approval of LMP and alternative monitoring strategy for Great Falls, Montana CO maintenance area, 80 FR 17331 (April 1, 2015).

<sup>16</sup> See CO LMP guidance, page 3.

<sup>17</sup> See 68 FR 69611, 69614 (December 15, 2003).

point source emissions data to the EPA as part of the National Emission Inventory (NEI) process each year and submits emissions model inputs that enable EPA to develop a comprehensive emissions inventory every third year.

Subsequently however, in its 2016 supplement, the NDEP provided the EPA with a 2011 emissions inventory for the Area. The Area continued to maintain the NAAQS in 2011, immediately prior to submittal of the 2012 plan (*see* Table 1) and, as such, 2011 is an appropriate year for which to provide the EPA with an emissions inventory in support of the second maintenance plan.

The supplement also provided a projected emissions inventory for 2024, with a least conservative and most conservative projection. As noted in the supplement, mobile sources account for the vast majority of CO emissions in the Area. The State's initial 10-year maintenance plan included an emissions inventory for onroad and nonroad mobile sources.<sup>18</sup> Therefore, the supplement provides a similar inventory for the second 10-year maintenance plan.<sup>19</sup>

Starting with the NEI CO emissions in 2011 for Carson City, Douglas and Washoe counties, each of which accounts for a portion of the basin, the State developed a 2011 inventory for the Area. The NEI provides countywide annual emissions for both onroad and nonroad source categories. The State adjusted NEI annual emissions from the three counties to represent the Area's emissions by applying ratios of either county-to-area VMT (for onroad) or county-to-area population (for nonroad), and then adjusted the resulting Area annual emissions to seasonal

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<sup>18</sup> *See* 68 FR 69611, 69615 (December 15, 2003).

<sup>19</sup> The State included an attachment to its 2016 supplement titled "Mobile Source Emissions Inventory and Future Year Projections for the 2012 Lake Tahoe Basin Carbon Monoxide Limited Maintenance Plan," and requested that the EPA append the attachment to its 2012 plan. *See* 2016 Supplement, page 4 and Attachment A.



emissions. In order to provide a sense of trending emissions over time, the State used the same methodology to provide emissions inventories for the Area for 2002, 2005 and 2008, and also presented the emissions for 2001 from the Area’s first 10-year maintenance plan.

The State also prepared a future year inventory for 2024, the last year of the second 10-year maintenance plan. The State developed the projected inventory with input and data from the Tahoe Regional Planning Agency (TRPA). TRPA used a travel demand model to estimate both 2010 and 2020 AADT under five development scenarios. The State used the difference between the AADT for 2010 and 2020 to develop onroad emissions inventories from 2011 to 2024 for the five TRPA development scenarios, resulting in a “least-conservative” and a “most-conservative” projection of emissions in 2024.

Table 4 is the summary of mobile source emissions inventories between 2001 and 2024, contained in the 2016 supplement. *See* 2016 supplement, Appendix A, page A-6. As shown in Table 4, the State estimates both that emissions in 2011 were 23 percent lower than in 2001, and that emissions in 2024 are projected to be between 13 percent and 25 percent lower than in 2001. These declining emissions levels are consistent with the traffic-based methodology the State chose for its surrogate method to monitor air quality in the Area.

**Table 4 – Lake Tahoe Nevada Area CO Season Mobile Emissions Inventory (tons per year)**

Year	2001	2002	2005	2008	2011	2024 <sub>LC</sub>	2024 <sub>MC</sub>
Onroad Emissions	5,832	5,832	5,766	3,496	4,529	4,396	5,089
Nonroad Emissions	375	375	323	252	207	178	190
Total Emissions	6,207	6,207	6,089	3,748	4,736	4,574	5,279

Key: LC = least conservative; MC = most conservative.

Source: 2016 supplement, page A-6.

The EPA finds that the attainment emissions inventory in the 2012 plan, as amended by the 2016 supplement, is adequate.

*D. Maintenance Demonstration*

We consider the maintenance demonstration requirement to be satisfied for areas that qualify for and use the LMP option.<sup>20</sup> As mentioned above, a maintenance area is qualified to use the LMP option if that area's maximum 8-hour CO design value for eight consecutive quarters does not exceed 7.65 ppm (85 percent of the CO NAAQS). EPA maintains that if an area begins the maintenance period with a design value no greater than 7.65 ppm, the combination of prevention of significant deterioration permit requirements, the control measures already in the SIP, and federal measures should provide adequate assurance of maintenance over the 10-year maintenance period. Therefore, the EPA does not require areas using the LMP option to project emissions over the maintenance period. Because CO design values in the Lake Tahoe Nevada Area are consistently well below the LMP threshold (*see* Table 1), the EPA finds that the State has adequately demonstrated that the Area will continue to maintain the CO NAAQS in the future.

*E. Transportation Conformity*

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. *See* CAA section 176(c)(1)(B). The EPA's conformity rule at 40 CFR part 93, Subpart A requires that transportation plans, programs and projects conform to SIPs and establish the criteria and procedures for determining whether or not

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<sup>20</sup> *See* CO LMP guidance, page 3.

they conform. To effectuate its purpose, the conformity rule generally requires a demonstration that emissions from the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) are consistent with the MVEB contained in the control strategy SIP revision or maintenance plan. *See* 40 CFR 93.101, 93.118, and 93.124. An MVEB is defined as the level of mobile source emissions of a pollutant relied upon in the attainment or maintenance demonstration to attain or maintain compliance with the NAAQS in the nonattainment or maintenance area.<sup>21</sup>

However, under the CO LMP guidance and the EPA's conformity rule, budgets are treated as essentially not constraining for the length of the maintenance period. While the guidance does not exempt an area from the need to determine conformity, it explains that the area may demonstrate conformity without submitting a MVEB because it is unreasonable to expect that an LMP area will experience so much growth in that period that a violation of the CO NAAQS would result.<sup>22</sup> Therefore, for the Lake Tahoe Nevada Area, all actions that require conformity determinations for CO under our conformity rule provisions are considered to have already satisfied the regional emissions analysis and budget test requirements in 40 CFR 93.118.<sup>23</sup> However, since LMP areas are still maintenance areas, certain aspects of transportation conformity determinations still will be required for transportation plans, programs and projects. Specifically, for such determinations, RTPs, TIPs and projects must still demonstrate that they are fiscally constrained (*see* 40 CFR 93.108) and that they meet the criteria for consultation and Transportation Control Measure implementation (*see* 40 CFR 93.112 and 40 CFR 93.113,

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<sup>21</sup> Further information concerning the EPA's interpretations regarding MVEBs can be found in the preamble to the EPA's November 24, 1993, transportation conformity rule. *See* 58 FR 62193 – 62196 (November 24, 1993).

<sup>22</sup> *See* CO LMP guidance, p. 4. *See also* 69 FR 40004, page 40063 (July 1, 2004), explaining revisions to make the conformity rule consistent with the EPA's existing limited maintenance plan policies.

<sup>23</sup> *See* 40 CFR 93.109(e).

respectively). In addition, projects in LMP areas are required to meet the applicable criteria for CO hot spot analyses to satisfy project level conformity determinations (*see* 40 CFR 93.116 and 40 CFR 93.123), which must also incorporate the latest planning assumptions and models available (*see* 40 CFR 93.110 and 40 CFR 93.111, respectively).<sup>24</sup>

Our approval of the 2012 plan, as amended by the 2016 supplement, effectively affirms our adequacy finding<sup>25</sup> such that no regional emissions analyses for future transportation CO conformity determinations are required for the CO LMP period and beyond. The other transportation conformity requirements listed above continue to apply.

#### *F. Ambient Air Quality Monitoring Network*

As noted previously, the EPA is approving the State's surrogate monitoring method for the Lake Tahoe Nevada Area as part of this action. We conclude that this method is adequate to verify continued attainment of the CO NAAQS in the Lake Tahoe Nevada Area. Accordingly, we find that the 2012 plan contains adequate monitoring provisions.

Prior to making their submittal of the 2012 plan, the State ran a CO monitoring network that consisted of the Harvey's monitor. The State provided ANPs to the EPA according to requirements in 40 CFR part 58.<sup>26</sup> The EPA approved these ANPs.<sup>27</sup> The EPA also performed

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<sup>24</sup> *See* 40 CFR 93.109(b), Table 1.

<sup>25</sup> *See* 68 FR 69611 (December 15, 2003).

<sup>26</sup> There are four ANPs relevant to this action, covering each of the three years prior to submittal of the 2012 plan, as well as the year 2012, the last year that the State monitored CO in the Area. *See* NDEP's ANPs for years 2009, 2010, 2011 and 2012.

<sup>27</sup> The EPA sent NDEP approval letters pertaining to 2009, 2010, 2011 and 2012 ANPs. *See* letters from Joseph Lapka, Acting Chief, Air Quality Analysis Office, U.S. EPA Region 9 Air Division, to Leo Drozdoff, Administrator, NDEP, dated October 30, 2009; from Matthew Lakin, Air Quality Analysis Office, U.S. EPA Region 9 Air Division, to Greg Remer, Chief, Bureau of Air Quality Planning, NDEP, dated November 1, 2010; from Matthew Lakin, Air Quality Analysis Office, U.S. EPA Region 9 Air Division, to Rob Bamford, Chief, Bureau of Air Quality Planning, NDEP, dated November 1, 2011; and from Matthew Lakin, Air Quality Analysis Office, U.S. EPA Region 9 Air Division, to Rob Bamford, Chief, Bureau of Air Quality Planning, NDEP, dated February 28, 2013, respectively.

Technical System Audits (TSAs) on a periodic basis. The last TSA the EPA performed for NDEP that included CO was in 2011 (“2011 TSA Report”).<sup>28</sup> In the 2011 TSA Report, the EPA made no findings specific to CO.<sup>29</sup>

*G. Verification of Continued Attainment*

The CO LMP guidance indicates that an LMP should contain provisions for continued operation of “an appropriate, EPA-approved air quality monitoring network” in the maintenance area, in accordance with 40 CFR part 58 (the EPA’s air quality monitoring regulations). The guidance explains that verifying continued maintenance is especially important for an LMP since the area will not have a cap on emissions.<sup>30</sup>

The Lake Tahoe Nevada Area has discontinued air quality monitoring for CO. In today’s action, the EPA is approving, in accordance with part 58, a surrogate CO monitoring method that relies on traffic counts. Since 2012, when air quality monitoring was discontinued, reports for traffic counts in the Area have shown no significant (25 percent or greater) increase. The State commits to maintaining readiness of the Harvey’s monitoring site during the maintenance period, in case air monitoring is triggered by traffic counts. The State further has provided a decision matrix for continued operation of the monitor, in the event that either CO concentrations or traffic counts are elevated, in order to ensure both that any violation of the CO NAAQS is monitored directly, as well as to ensure that contingency measures are implemented at the level approved in the first 10-year maintenance plan, at 85 percent of the NAAQS. The State has already commenced, and commits to continue during the maintenance period, reporting annually

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<sup>28</sup> The EPA’s final TSA prior to CO monitor discontinuation was performed in 2011. *See* letter and 2011 TSA Report enclosure from Deborah Jordan, Director, U.S. EPA Region 9 Air Division, to Colleen Cripps, Administrator, NDEP, dated August 1, 2013.

<sup>29</sup> *Ibid*, p. 24.

<sup>30</sup> *See* CO LMP guidance, p. 4, section c, “Monitoring Network/Verification of Continued Attainment.”

to the EPA the traffic counts in north and south portions of the Area. The EPA therefore determines that the LMP satisfies this element of the CO LMP guidance.

#### *H. Contingency Plan*

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of an area. Under 175A(d), contingency measures do not have to be fully adopted at the time of redesignation. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expeditiously once they are triggered by a specific event. The EPA's CO LMP guidance recommends that, to meet the contingency plan requirement, a state should identify appropriate contingency measures along with a schedule for the development and implementation of such measures.<sup>31</sup>

The State's contingency plan for the Area was approved in the first 10-year LMP. Section 4 of the 2012 plan addresses a contingency plan for the Area for the second 10-year maintenance period. However, the 2016 supplement requests that the EPA replace section 4 of the 2012 plan with a paragraph in section II of the 2016 supplement. Section II, "Revision to Section 4 of the 2012 CO LMP," indicates that the contingency plan in the first 10-year maintenance plan will apply for the second 10-year maintenance period.

The contingency plan in the first 10-year maintenance plan contains a detailed, multi-step process for addressing any potential CO NAAQS violations. First, the plan provides a triggering mechanism through which NDEP will determine when a pre-violation action level is reached. Second, the plan spells out the procedures that will be followed if the pre-violation action level is

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<sup>31</sup> See CO LMP guidance, p. 4, section d, "Contingency Plan."

reached, including activation of a multi-agency Conformity Task Force, analysis of monitoring data and development of recommendations for action. Finally, the plan provides for these recommendations to be implemented by NDEP and/or the appropriate local jurisdictions in the Area, all of which have committed to implementing expeditiously any and all measures necessary to achieve emissions reductions needed to maintain the CO NAAQS.<sup>32</sup>

We find that the contingency plan the EPA approved in the first 10-year LMP, which the State indicates in the 2016 supplement will continue to apply during the second 10-year maintenance period, is sufficient to meet the requirements of section 175A(d) of the CAA and the CO LMP guidance.

### **III. Public Comment and Final Action**

As authorized in section 110(k)(3) of the Act, the EPA is fully approving the State of Nevada's second 10-year maintenance plan for the Area, titled "2012 Revision to the Nevada State Implementation Plan: Updated Limited Maintenance Plan for the Nevada Side of the Lake Tahoe Basin, Including Douglas, Carson City and Washoe Counties," submitted to the EPA on April 3, 2012, and as amended by a submittal on August 26, 2016, titled "2016 Supplement to Nevada's 2<sup>nd</sup> 10-Year Maintenance Plan at Lake Tahoe."

Consistent with the State's request in the 2016 supplement, we are approving two sections of the 2016 supplement as revisions to the 2012 plan and therefore take no action on the original, 2012 versions of those sections. First, we are not acting on section 3.2.4 of the 2012 plan, containing the State's alternative CO monitoring strategy and contingency plan, because we

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<sup>32</sup> As we noted in our approval of the first 10-year maintenance plan, the following local jurisdictions have passed resolutions promising to adhere to the provisions of the contingency plan in the 2003 Lake Tahoe Nevada Limited Maintenance Plan: the Tahoe Metropolitan Planning Organization, the Washoe County District Health Department and the State of Nevada Department of Transportation, which is a participant in the Interagency Consultation Procedures established by the Tahoe Metropolitan Planning Organization. *See* 68 FR 69611, 69615, footnote 4.

are instead approving into the SIP the revised section 3.2.4 included in the 2016 supplement, still titled “3.2.4 Surrogate Method for Tracking CO Concentrations.” Second, we are not acting on section 4 of the 2012 plan, titled “4. Contingency Measures,” because we are instead approving into the SIP the revised section 4 included in the 2016 supplement, titled “II. Revision to Section 4 of the 2012 CO LMP.”

Other parts of the 2016 supplement that we are approving are the 2011 emissions inventory and 2024 projected emissions inventory (*i.e.*, Attachment A, titled “Mobile Source Emissions Inventory and Future Year Projections for the 2012 Lake Tahoe Basin Carbon Monoxide Limited Maintenance Plan”), evidence of public participation (*i.e.*, Attachment B, titled “Evidence of Public Participation”) and revised table of contents for the 2012 submittal (*i.e.*, Attachment F, titled “Replacement for 2012 CO LMP Contents Page”).

Also consistent with the State’s request in the 2016 supplement, our approval takes no action on the 2016 supplement’s Attachments C, D and E, titled respectively “Statistical Support for Criteria Used to Determine Whether to Continue CO Monitoring,” “Surrogate Method Report for Tracking Carbon Monoxide at Lake Tahoe, Nevada, 2011 – 2015,” and “Inventory Preparation Plan for the Mobile Source Emissions Inventory and Future Year Projections for the 2012 Lake Tahoe Basin Carbon Monoxide Limited Maintenance Plan.” These three attachments each have header text that includes the statement “Not for inclusion in Nevada’s SIP.”

We do not think anyone will object to these approvals, so we are finalizing them without proposing them in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted plans. If we receive adverse comments by **[Insert date 30 days after date of publication in the Federal Register]**, we will



publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on **[Insert date 60 days after date of publication in the Federal Register]**.

This action incorporates the 2012 plan, as amended by the 2016 supplement, and specific portions of the 2016 supplement itself, into the federally enforceable SIP. Together, these two submittals meet the applicable CAA requirements, and the EPA has determined they are sufficient to provide for maintenance of the CO NAAQS over the course of the second 10-year maintenance period through 2024.

#### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k) and 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (*see* 58 FR 51735, October 4, 1993) and 13563 (*see* 76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (*see* 44 U.S.C. 3501 *et seq.*);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (*see* 5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (*see* Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (*see* 64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (*see* 62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (*see* 66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (*see* 15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (*see* 59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175. *See* 65 FR 67249 (November 9, 2000).

The Congressional Review Act (*see* 5 U.S.C. section 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* CAA section 307(b)(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

December 22, 2016.  
Dated:

Deborah Jordan,  
Acting Regional Administrator,  
Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52— APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et seq.

**Subpart DD – Nevada**

2. In § 52.1470, paragraph (e) is amended by adding, under the table heading “Air Quality Implementation Plan for the State of Nevada,” two entries “2012 Revision to the Nevada State Implementation Plan for Carbon Monoxide, April 2012” and “2016 Supplement to Nevada’s 2<sup>nd</sup> 10-Year CO Limited Maintenance Plan at Lake Tahoe, August 26, 2016” after the entry “Addendum to the October 27, 2003 letter of transmittal of the redesignation request and maintenance plan,” to read as follows:

**§ 52.1470 Identification of plan.**

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(e) \* \* \*

**EPA-APPROVED NEVADA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES**

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
<b>AIR QUALITY IMPLEMENTATION PLAN FOR THE STATE OF NEVADA<sup>1</sup></b>				
* * * * *				
2012 Revision to the Nevada State Implementation Plan for Carbon Monoxide, April 2012	Nevada portion of Lake Tahoe Basin—portions of Carson City, Douglas and Washoe counties	4/3/2012	<b>[Insert Federal Register Citation] ([INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER])</b>	Adopted on 4/3/2012. Approval excludes sections 3.2.4 and 4. With 2016 supplement, fulfills requirement

				for second ten-year maintenance plan.
2016 Supplement to Nevada’s 2nd 10-Year CO Limited Maintenance Plan at Lake Tahoe, August 26, 2016	Nevada portion of Lake Tahoe Basin—portions of Carson City, Douglas and Washoe counties	8/26/2016	<b>[INSERT <u>Federal Register</u> CITATION] ([INSERT DATE OF PUBLICATION])</b>	Adopted on 8/26/2016. Approval includes revised sections 3.2.4 and 4 (alternative CO monitoring strategy and contingency plan), 2011 emissions inventory and 2024 projected emissions inventory (Attachment A), evidence of public participation (Attachment B) and revised table of contents for 2012 submittal (Attachment F). Excludes Attachments C, D and E.
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<sup>1</sup> The organization of this table generally follows from the organization of the State of Nevada's original 1972 SIP, which was divided into 12 sections. Nonattainment and maintenance plans, among other types of plans, are listed under Section 5 (Control Strategy). Lead SIPs and Small Business Stationary Source Technical and Environmental Compliance Assistance SIPs are listed after Section 12 followed by nonregulatory or quasi-regulatory statutory provisions approved into the SIP. Regulatory statutory provisions are listed in 40 CFR 52.1470(c).